



March 11, 1999

Mr. Ronald L. Sutton
District Attorney
Office of the District Attorney
198th Judicial District
P.O. Box 126
Junction, Texas 76849

OR99-0698

Dear Mr. Sutton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122720.

The Office of the District Attorney for the 198th Judicial District (the “district attorney”) received a request for the names and charges of individuals who were “no billed” by the Grand Jury for the 198th Judicial District. You ask if the requested information is subject to the Open Records Act.

The Open Records Act (the “act”) requires the release of all information held by a governmental body unless one of the act’s specific exceptions protects the information from required disclosure. A district attorney’s office is generally considered a “governmental body” for purposes of the act. *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Thus, all information held by the district attorney in its own capacity is public unless specifically excepted from disclosure.

The judiciary, however, is expressly excluded from the requirements of the act. Gov’t Code § 552.003(1)(B). This office has determined that a grand jury, for purposes of the Open Records Act, is a part of the judiciary, and therefore not subject to the act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and therefore are not subject to the act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). The fact that information collected or prepared by the district attorney

is submitted to the grand jury does not necessarily mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney in its own capacity. Information held by the district attorney but not produced at the direction of the grand jury may well be protected under one of the act's specific exceptions, but it is not excluded from the reach of the act by the judiciary exclusion. Open Records Decision No. 513 (1988).

Therefore, information about the two named individuals, regardless of whether the individuals were arrested, which is held by the district attorney in its own capacity is subject to the act and must be released. However, information about whether the two named individuals were "no billed" may be information held by the district attorney acting as an agent of the grand jury. Such information is considered a record of the judiciary and is not subject to the act.

We also note that while the requestor asks for some specific information, she also seeks information to be provided in the future on a regular basis. The requestor asks "that we always be given both the names of those no-billed and the charges they faced." While chapter 552 does not prohibit a governmental body from voluntarily complying with a standing request for information, neither does chapter 552 require a governmental body to comply with a standing request for information to be collected or prepared in the future. See Attorney General Opinion JM-48 (1983). Additionally, chapter 552 does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). To the extent that the requestor seeks information which had not yet been created at the time of the request, the district attorney need not comply with this portion of the request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/GLG/ch

Ref.: ID# 122720

cc: Ms. Mary Elizabeth Davis
Reporter
The Mountain Sun
P.O. Box 1249
Kerrville, Texas 78029